

Regular Session, 2013

HOUSE BILL NO. 197

BY REPRESENTATIVE GREENE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

LOCAL FINANCE: Provides relative to fiscal administrators for political subdivisions, including appointment, powers and duties, and criminal penalties for violations of law relative to public administrators

1 AN ACT

2 To amend and reenact R.S. 39:1351(A)(1) and (3) and (B) and to enact R.S.  
3 39:1351(A)(2)(c), 1352(A)(3) and (4), (B)(3), and (C), and 1355, relative to fiscal  
4 administrators for political subdivisions; to provide for appointment of fiscal  
5 administrators and circumstances that provide evidence of the need for or require  
6 such appointments; to provide relative to the powers and duties of fiscal  
7 administrators; to provide for payment of costs associated with fiscal administration  
8 of a political subdivision and for indemnification of fiscal administrators; to require  
9 cooperation with and provision of information to fiscal administrators by officers,  
10 officials, and employees of political subdivisions and departments, agencies, and  
11 entities of political subdivisions and to provide procedures for a fiscal administrator  
12 to obtain information; to provide for penalties, including criminal penalties, for  
13 violation of provisions relative to fiscal administrators; to provide relative to costs  
14 and attorney fees; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 39:1351(A)(1) and (3) and (B) are hereby amended and reenacted

and R.S. 39:1351(A)(2)(c), 1352(A)(3) and (4), (B)(3), and (C), and 1355 are hereby enacted to read as follows:

§1351. Appointment of a fiscal administrator

A.(1)(a) The legislative auditor, the attorney general, and the state treasurer, or their designees, shall meet, as often as deemed necessary, to review the financial stability of the political subdivisions of this state.

(b) As used in this Chapter, "financial stability" is defined as a condition in which the political subdivision is capable of meeting its financial obligations in a timely manner as they become due without substantial disposition of assets outside the ordinary course of business, substantial layoffs of personnel, or interruption of statutorily or other legally required services of the political subdivision, restructuring of debt, revision of operations, or similar actions.

(2)

\* \* \*

(c)(i) Failure of a political subdivision to provide an audit required by R.S. 24:513 to the legislative auditor for a period of three consecutive fiscal years shall automatically remove the political subdivision from the category of "financial stability" as defined in this Chapter and shall be prima facie evidence that the political subdivision is reasonably certain not to have sufficient revenue to pay current expenditures, excluding civil judgments.

(ii) Failure of a city, parish, or other local public school board to provide an audit required by R.S. 24:513 to the legislative auditor for a period of three consecutive fiscal years shall automatically place that political subdivision in the category of "financially at risk" and shall be prima facie evidence that the political subdivision is reasonably certain to fail to resolve its status as financially at risk as that status is defined by rule by the State Board of Elementary and Secondary Education.

~~(3) Upon the making of such the decision authorized by Paragraph (2) of this Subsection,~~ the attorney general shall, on motion in the district court of the domicile of the political subdivision, take a rule on the political subdivision to show cause in

1       ~~not less than ten nor more than twenty days~~ why a fiscal administrator should not be  
2       appointed for the political subdivision as provided for in this Chapter. The hearing  
3       on the rule to show cause may be tried out of term and in chambers, ~~and~~ shall always  
4       be tried by preference, and shall be held in not less than ten nor more than twenty  
5       days from the date the motion is filed.

6               B.(1) The trial court shall appoint a fiscal administrator in the following  
7       instances:

8               (a) If the court finds from the facts and evidence deduced at the hearing of  
9       the rule that the political subdivision is reasonably certain to fail to make a debt  
10      service payment or reasonably certain to not have sufficient revenue to pay current  
11      expenditures, excluding civil judgments, or, in the case of a city, parish, or other  
12      local public school board, reasonably certain to fail to resolve its status as financially  
13      at risk as that status has been defined by rule by the State Board of Elementary and  
14      Secondary Education, ~~the court shall appoint a fiscal administrator for the political~~  
15      subdivision.

16              (b) If a political subdivision has failed to provide an audit required by R.S.  
17      24:513 to the legislative auditor for a period of three consecutive fiscal years, the  
18      court shall appoint a fiscal administrator for the political subdivision unless the  
19      political subdivision provides sufficient evidence to establish that the political  
20      subdivision has an audit for one or more of three such years.

21              (2) The fiscal administrator shall be a person recommended by the legislative  
22      auditor and the attorney general and approved by the court as having sufficient  
23      education, experience, and qualifications to enable him to perform the duties of fiscal  
24      administrator as provided for in this Chapter.

25              (3) The fiscal administrator appointed under this Chapter shall be  
26      indemnified as a covered person as defined in R.S. 13:5108.1.

27              (4) All costs and expenses associated with the independent fiscal  
28      administration of a political subdivision, including but not limited to all costs and  
29      expenses incurred by the fiscal administrator, the legislative auditor, the attorney  
30      general, the state treasurer, and any other persons engaged in connection with the

1 independent fiscal administration of a political subdivision shall be borne by the  
2 political subdivision subject to independent fiscal administration.

3 \* \* \*

4 §1352. Duties of a fiscal administrator

5 A.

6 \* \* \*

7 (3) The fiscal administrator, subject to approval of the court, shall have  
8 authority to direct all fiscal operations of the political subdivision and to take  
9 whatever action he deems necessary to return the political subdivision to financial  
10 stability. Such authority shall include but not be limited to authority to take one or  
11 more of the following actions:

12 (a) Amend, formulate, and execute the annual budget and supplemental  
13 budgets of the political subdivision.

14 (b) Implement and maintain uniform budget guidelines and procedures for  
15 all departments.

16 (c) Amend, formulate, and execute capital budgets, including authority to  
17 amend any borrowing authorization or finance or refinance any debt in accordance  
18 with law.

19 (d) Review and approve or disapprove all contracts for goods or services.

20 (e) Appoint, remove, supervise, and control all personnel.

21 (f) Alter or eliminate the responsibilities of officials, officers, or employees  
22 of the political subdivision as required by the fiscal emergency.

23 (g) Employ, retain, and supervise such managerial, professional, and clerical  
24 staff as are necessary to carry out the fiscal administrator's responsibilities.

25 (h) Reorganize, consolidate, or abolish departments, commissions,  
26 authorities, boards, offices, or functions of the political subdivision.

27 (i) Make any appropriation, contract, expenditure, or loan, create any new  
28 position, or fill any vacancy, or approve or disapprove any such action.

29 (4) Upon the appointment of a fiscal administrator, the officers, officials, and  
30 employees of the political subdivision shall serve in an advisory capacity to the fiscal

1 administrator. The fiscal administrator shall allow the officers, officials, and  
2 employees to serve their constituents and fulfill their duties by providing advice to  
3 the fiscal administrator on matters relating to the operation of the political  
4 subdivision. If a conflict arises, the fiscal administrator's decision shall prevail.

5 B.

6 \* \* \*

7 (3) The fiscal administrator shall file such other reports as required by the  
8 court.

9 C. In order to perform the investigation and reporting required of the fiscal  
10 administrator by this Chapter, the officers, officials, and employees of the political  
11 subdivision shall cooperate in providing any and all information required by the  
12 fiscal administrator in the performance of his statutorily required duties within three  
13 business days of the fiscal administrator's request. If the officer, official, or  
14 employee is unable to provide the information within the required time, then the  
15 officer, official, or employee shall send a written notice to the fiscal administrator  
16 within the three-business-day deadline explaining the reason the information is not  
17 forthcoming. If the officer, official, or employee fails to respond by the three-  
18 business-day deadline, or if the fiscal administrator fails to receive the requested  
19 information, then the attorney general or his designee shall file either or both of the  
20 following with the district court:

21 (1) A writ of mandamus to compel the officer or official to perform the  
22 mandatory or ministerial duties correctly.

23 (2) A motion for injunctive relief seeking to compel the officer, official, or  
24 employee to act or refrain from acting, pending final resolution of the issue.

25 \* \* \*

26 §1355. Penalties

27 A.(1) Any officer, official, or employee who violates the provisions of this  
28 Chapter, including failing to cooperate to the fullest extent possible with the fiscal  
29 administrator, shall be guilty of malfeasance in office under R.S. 14:134 and gross

1 misconduct and shall be subject to removal from office or employment as provided  
2 by law.

3 (2) Any officer, official, or employee who violates the provisions of this  
4 Chapter, including failing to cooperate to the fullest extent possible with the fiscal  
5 administrator, shall be subject to an action for recovery of any funds, property, or  
6 other thing of value and any other damages resulting from such violation.

7 (3) Any officer, official, or employee of a political subdivision or of any  
8 department, agency, or entity of a political subdivision who knowingly and willfully  
9 participates in a violation of this Chapter, including failing to cooperate to the fullest  
10 extent with the fiscal administrator, shall be subject to a civil penalty not to exceed  
11 one thousand dollars per violation. The officer, official, or employee shall be  
12 personally liable for the payment of such penalty.

13 (4) In addition to the penalties provided for in this Chapter, a person who  
14 violates the provisions of this Chapter shall be ordered to pay restitution to the state  
15 if the state suffered a loss as a result of the offense. Restitution shall include the  
16 payment of legal interest at the rate provided in R.S. 13:4202.

17 B.(1) In addition to the penalties provided in Subsection A of this Section,  
18 any officer, official, or employee who is guilty of any violation as provided in  
19 Paragraph (2) of this Subsection shall be fined not less than five hundred dollars nor  
20 more than five thousand dollars, or imprisoned for not less than ten days nor more  
21 than six months, or both.

22 (2) It shall be a violation of this Chapter for any officer, official, or employee  
23 of a political subdivision or of any department, agency, or entity of a political  
24 subdivision:

25 (a) To neglect, fail, or refuse to furnish the fiscal administrator with such  
26 papers, accounts, books, documents, films, tapes, and other forms of recordation,  
27 including but not limited to computer and recording devices, whether confidential,  
28 privileged, or otherwise, that the fiscal administrator has the right to inspect and  
29 examine.

1           (b) To deny the fiscal administrator access to the office, or to papers,  
 2           accounts, books, documents, films, tapes, and other forms of recordation, including  
 3           but not limited to computer and recording devices, whether confidential, privileged,  
 4           or otherwise, that the fiscal administrator has the right to inspect or examine.

5           (c) To refuse, fail, or neglect to transmit to the fiscal administrator reports,  
 6           statements of accounts, or other documents upon request as provided by law.

7           (d) To obstruct or impede the fiscal administrator, in any manner, in making  
 8           the examination authorized by law.

9           C. Neither costs nor attorney fees related to any legal action pursuant to  
 10          charges of misconduct or malfeasance or to any other matter related to the  
 11          appointment of a fiscal administrator initiated by either the political subdivision or  
 12          an officer, official, or employee of a political subdivision shall be reimbursed to an  
 13          officer, official, or employee of a political subdivision unless the officer, official, or  
 14          employee is acquitted or the suit is dismissed.

### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Greene

HB No. 197

**Abstract:** Provides relative to fiscal administrators for political subdivisions, including provisions for circumstances that require such appointments, their powers and duties, payment of costs associated with fiscal administrators, indemnification of fiscal administrators, procedures for a fiscal administrator to obtain information, and penalties for violation of provisions relative to fiscal administrators.

Provides relative to fiscal administrators for political subdivisions as follows:

- (1) Present law requires the legislative auditor, attorney general, and state treasurer, or their designees, to meet, as often as necessary, to review the financial stability of the political subdivisions of the state.

Proposed law retains present law and defines "financial stability" as a condition in which the political subdivision is capable of meeting its financial obligations in a timely manner as they become due without substantial disposition of assets outside the ordinary course of business, substantial layoffs of personnel, or interruption of statutorily or other legally required services of the political subdivision, restructuring of debt, revision of operations, or similar actions.

- (2) Present law requires the attorney general to file a rule to appoint a fiscal administrator for the political subdivision, if the legislative auditor, the attorney

general, and the state treasurer decide at a public meeting that a political subdivision is reasonably certain to: (a) not have sufficient revenue to pay current expenditures, excluding civil judgments, or (b) fail to make a debt service payment. For school boards, also provides that, upon notification by the state superintendent of education at the direction of the State Board of Elementary and Secondary Education (BESE), the attorney general shall file such a rule when he, the legislative auditor, and the state treasurer decide at a public meeting that a local public school board is reasonably certain to fail to resolve its status as financially at risk as that status is defined by BESE rule.

Proposed law retains present law and additionally provides that failure of a political subdivision to provide an audit required by law to the legislative auditor for a period of three consecutive fiscal years shall automatically remove the political subdivision from the category of "financial stability" and shall be prima facie evidence that the political subdivision is reasonably certain not to have sufficient revenue to pay current expenditures, excluding civil judgments. Also provides that such failure by a local public school board automatically places that political subdivision in the category of "financially at risk" and shall be prima facie evidence that the political subdivision is reasonably certain to fail to resolve its status as financially at risk as that status has been defined by BESE rule.

- (3) Proposed law retains present law that requires the attorney general, when such a decision is made, to take a rule on the political subdivision to show cause why a fiscal administrator should not be appointed for the political subdivision.
- (4) Present law requires the trial court to appoint a fiscal administrator if the court finds that the political subdivision is reasonably certain to fail to make a debt service payment or reasonably certain to not have sufficient revenue to pay current expenditures, excluding civil judgments, or, in the case of a local public school board, reasonably certain to fail to resolve its status as financially at risk as that status has been defined by BESE rule.

Proposed law additionally requires the court to appoint a fiscal administrator when a political subdivision has failed to provide an audit required by law to the legislative auditor for a period of three consecutive fiscal years, unless the political subdivision provides sufficient evidence to establish that the political subdivision has an audit for one or more of three such years.

- (5) Proposed law provides that a fiscal administrator shall be indemnified as a covered person under present law (R.S. 13:5108.1), relative to indemnification of state officers and employees.
- (6) Proposed law requires that costs and expenses associated with fiscal administration of a political subdivision, including those incurred by the fiscal administrator, the legislative auditor, the attorney general, the state treasurer, and other persons, shall be borne by the political subdivision.
- (7) Present law provides for the duties of a fiscal administrator, including investigating the financial affairs of the political subdivision. Grants him access to all records of the political subdivision and of the state as they relate to the political subdivision.

Proposed law provides that the fiscal administrator, subject to approval of the court, shall have authority to direct all fiscal operations of the political subdivision and to take whatever action he deems necessary to return the political subdivision to financial stability. Includes the following in such authority:

- (a) Amend, formulate, and execute the annual budget and supplemental budgets.
- (b) Implement and maintain uniform budget guidelines and procedures for all departments.



- (c) Amend, formulate, and execute capital budgets, including authority to amend any borrowing authorization, or finance or refinance any debt in accordance with law.
  - (d) Review and approve or disapprove all contracts for goods or services.
  - (e) Appoint, remove, supervise, and control all personnel.
  - (f) Alter or eliminate the responsibilities of officials, officers, or employees of the political subdivision as required by the fiscal emergency.
  - (g) Employ, retain, and supervise such managerial, professional, and clerical staff as necessary to carry out the fiscal administrator's responsibilities.
  - (h) Reorganize, consolidate, or abolish departments, commissions, authorities, boards, offices, or functions.
  - (i) Make any appropriation, contract, expenditure, or loan, create any new position, or fill any vacancy, or approve or disapprove any such action.
- (8) Proposed law provides that the officers, officials, and employees of the political subdivision shall serve in an advisory capacity to the fiscal administrator and that they be allowed to serve their constituents and fulfill their duties by providing advice to the fiscal administrator. Specifies that in a case of conflict, the fiscal administrator's decision prevails.
- (9) Present law requires the fiscal administrator to file a report with the court after his investigation containing:
- (a) Estimates of revenues and expenditures.
  - (b) Amendments to the comprehensive budget or a proposed comprehensive budget, ensuring payments of debt service and sufficient revenue to pay current expenditures.
  - (c) An estimate of needed financial aid or new revenue.
  - (d) A recommendation of whether the political subdivision should be permitted to file for bankruptcy.

Proposed law specifies that the fiscal administrator shall file such other reports as required by the court.

- (10) Proposed law requires that the officers, officials, and employees of the political subdivision cooperate in providing all information the fiscal administrator requires within three business days of the fiscal administrator's request. Requires an officer, official, or employee who is unable to provide the information timely to send the fiscal administrator a written notice within the three business days explaining why. Requires, upon failure of a timely response or failure to receive the information, that the attorney general or his designee file either or both of the following with the district court:
- (a) A writ of mandamus to compel the officer or official to perform the mandatory or ministerial duties correctly.
  - (b) A motion for injunctive relief seeking to compel the officer, official, or employee to act or refrain from acting, pending final resolution of the issue.
- (11) Proposed law provides that any officer, official, or employee who violates the provisions of the law relative to fiscal administrators, including failing to cooperate to the fullest extent possible with the fiscal administrator, shall be guilty of malfeasance in office under present law (R.S. 14:134) and gross misconduct and shall be subject to removal from office or employment as provided by law and to all of the following penalties:
- (a) An action for recovery of any funds, property, or other thing of value and any other damages resulting from such violation.

- (b) For knowingly and willfully participating in a violation, a civil penalty not to exceed \$1,000 per violation for which the violator shall be personally liable.
  - (c) Payment of restitution to the state if the state suffered a loss as a result of the offense, including legal interest.
- (12) Proposed law provides an additional penalty of a fine of not less than \$500 nor more than \$5,000, or imprisonment for not less than 10 days nor more than six months, or both for any officer, official, or employee who:
- (a) Neglects, fails, or refuses to furnish the fiscal administrator with such papers, accounts, books, documents, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, whether confidential, privileged, or otherwise, that the fiscal administrator has the right to inspect and examine.
  - (b) Denies the fiscal administrator access to the office, or to papers, accounts, books, documents, films, tapes, and other forms of recordation, including but not limited to computer and recording devices, whether confidential, privileged, or otherwise, that the fiscal administrator has the right to inspect or examine.
  - (c) Refuses, fails, or neglects to transmit to the fiscal administrator reports, statements of accounts, or other documents upon request.
  - (d) Obstructs or impedes the fiscal administrator, in any manner, in making the examination.
- (13) Proposed law provides that an officer's, official's, or employee's costs or attorney fees related to any legal action pursuant to charges of misconduct or malfeasance or to any other matter related to the appointment of a fiscal administrator initiated by either an officer, official, or employee of the political subdivision shall not be reimbursed unless the officer, official, or employee is acquitted or the suit is dismissed.

(Amends R.S. 39:1351(A)(1) and (3) and (B); Adds R.S. 39:1351(A)(2)(c), 1352(A)(3) and (4), (B)(3), and (C), and 1355)